THE TRIUMPHS OF JUSTICE OVER Unjuſt Judges:

EXHIBITING,

I. The *Names* and Crimes of **Four and Forty Judges** Hang'd in *one Year* in *England*, as *Murderers* for their corrupt Judgments.

II. The Caſe of the Lord *Chief Juſtice Treſilian*, *Hang'd* at Tyburn, and all the reſt of the *Judges* of *England* (ſave one) baniſht in K. *Rich.* the 2*ds* Time.

III. The Crimes of *Empſon* and *Dudley*, *Executed* in K. *Henry* the 8*th*'s Days.

IV. The *Proceedings* of the *Ship-money-Judges* in the Reign of K. *Charles* the Firſt.

V. Diverſe other Preſidents both *Antient* and *Modern*.

To which is added

VI. The *Judges* OATH, and ſome *Obſervations* thereupon.

Humbly Dedicated to the

Lord Chief Juſtice Scroggs.

Diſcite Juſtitiam moniti, & non temnere Leges.

LONDON,

Printed for *Benjamin Harris*, at the Stationers Arms in the *Piazza* under the *Royal Exchange*. 1681.

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TRIUMPHS

OF

JUSTICE

OVER

Unjust Judges:

EXHIBITING,

The Rise and Crimes of Four and Forty Judges Hang'd in one Year in England, as Murderers for their corrupt Judgments.

II. The Case of the Lord chief Justice Fresham, Hang'd at Tyburn, and all the rest of the Judges of England (save one) hanged in K. Rich the 2d Time.

III. The Crimes of Empson and Dudley, Executed in K. Hen. the 8th's Days.

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Lord Chief Justice Strange.

Pyrite Justitiam moniti, & non temere Dei.

LONDON

Printed for *Benjamin Harris*, at the Stationers Arms in the Piazza under the *Royal Exchange*.

TO

Sir William Scroggs Kt.

LORD CHIEF JUSTICE

Of His Majesties Court of

KINGS-BENCH

AT

WESTMINTER.

I Know not to whom I could more properly *Dedicate* a Treatise of *this Nature*, than to Your *Lordship*, who is at Present Lord *Chief Justice* of *England*, and have set such *remarkable Copies* to inferior Magistrates. What is here offered, is neither *Prophecy* nor *Plaister*, *Lampoon*, nor *Romance*; but a clear *Mirrour* retreiv'd out of the Closet of wise *Antiquity*, In which future Adminiſtrators of publick *Justice* would do well to *Look*; For you know, My Lord, *Common-Law* runs much upon *Presidents*; And if a Man happen to have none of the *best Physiognomies*, there is no reason why he should straight grow *angry*; and fling stones to break *all the Looking-Glasses* he meets with, only because they represent the *true* Figure of the Object.

'Tis a *Priviledge* we Scribblers that *write for Bread*, hold by *Prescription*, to put any great Bodies name in the front of our Book. *Princes* have not been able to exempt themselves or their Favourites from the Persecution of *Dedications*, nor

is there (*I* humbly conceive) any *Rule* made in Your Lordships *Court* to forbid them.

Suffer then, *I* beseech Your Lordship this *Address* to remain a *Monument* to Posterity of the Sentiments this *Age* has of Your Lordships *Conduct* and *Merits*, and witness to all the world how much its Author, is

T A

Westminster-Hall this 23 of Dec. 1680.

I Your Lordships

most humble Servant

Philo-Dicaios.

THE

THE TRIUMPHS OF JUSTICE OVER Unjuſt Judges, &c.

UNdoubtedly there may be, becauſe there has been too often in the World; ſuch a thing, ſuch a ſin, ſuch a miſchief, as **Corruption of Judges**, that is, when by means of Pecuniary, or other Bribes, or (which is all out as bad) Threatnings, Promiſes of Reward, Malice, Revenge, hopes of greater, or fears of being turned out of preſent Preferments, or any other ill motive; They that are appointed and Sworn to Adminiſter *equal* and *impartial* Right and Juſtice, are wrap'd aſide, or *Biaſ'd* to *ſerve a Turn*, or *Wreck* a *private Grudge*, or to *free the Guilty*, or *condemn the Innocent*; or to lean rather to the one ſide, than to the other; or wilfully to declare that to be *Law*, which they cannot but know is not ſo; or to adjudge puniſhments *diſproportionate* to the Crimes that appear before them, or any the like *baſe*, *illegal* practiſes.

How odious this Vice is, to *God and Man*, as being equally deſtructive to Religion, and Humane Society; and how ſeverely it has been heretofore puniſhed, by both, may appear by The Enſuing Examples.

1. As to God, who is *Capitalis Juſtitiarius Cæli & Terræ*, the Grand never-erring Juſtitiary of all the World. His Sacred Word prohibits nothing more poſitively, nor omplain of any thing lowder, or with more repeated importunities. *Thou ſhalt not reſt the judgment of the poor in his cauſe; Thou ſhalt take no gift, for a gift blindeth the eye of the wiſe, and perverteth the words of the Righteous*, Ex. 23. 6 and 8 ver. *Thou ſhalt not reſt juegment; thou ſhalt not reſpect perſons, neither take a gift*, &c. Deut. 16. 19. Woe *unto them that juſtifie the wicked for reward, and taketh away the righteouſneſs of the righteous from him*, Iſa. 5. 23. *A wicked man taketh a gift out of the boſome* ('tis done you ſee *ſlyly*, and in the *dark*) *to pervert the ways of judgment*, Prov. 17 23. Woe *unto yee who turn judgment into wormwood, and leave off righteouſneſs in the earth*, Amos 5. 7. *The good man is periſhed out of the earth, and there is none upwright amongſt men; They all lye in wait for bloud; they hunt every man his brother as with a net, that they may do evil with both hands earneſtly. The Prince asketh, and the Judg gapeth for a reward; and the great man uttereth his miſchievous deſire, ſo they wrap*

it up: the beſt of them is as a briar, the moſt upright is ſharper than a thorn-hedg, &c. Mic. 7. 2, 3, & 4 ver. with many of the like Texts.

2, As corrupt Judges are thus obnoxious to the *Curſe of God*, ſo hath his Divine Providence not ſeldome Executed it upon them even in this world by the hands of *men*. Nor indeed is there any thing that can render *Kings* (Gods Vicegerents) more *Glorious*, or better eſtabliſh any *ſtate*, than to keep the Current of *Juſtice* clear and unſullied; and exemplarily to puniſh their Subordinate *Miniſters*, and eſpecially *Judges* that ſhall preſume to *impoiſon* that Sacred *Fountain*.

Several Heathen Princes are Renowned for this wholeſom ſeverity. 'Tis ſaid of *Alexander Severus* the *Roman* Emperour, that he had ſuch an averſion and abhorrence of unjuſt Judges, that at the very ſight of them he would vomit *Choler*, & was ready with his fingers to *pluck out their eyes*. *Theatrum Hiſtoricum*, *f.* 546.

The Mighty Monarch *Cambyſes*, King of *Perſia*, finding that one *Siſamnes* his *Chief Juſtice* (*Præſes* our Author calls him in *Latin*) had receiv'd a *Bribe*, and for the ſame pronounced an unjuſt Sentence, forthwith cauſed him to be Executed, and curiouſly flead, and with his skin cover'd the *Common Seat* of Juſtice, and Conſtituted *Otanes* (the ſaid *Siſamnes*'s own Son) Judg in his Room; That ſo beholding daily thoſe *Reliques* of his juſtly-puniſht Father; It might ſerve as a *Memento* to him to act more uprightly. *Chronicon Carionis l. 2. p.* 19.

But not to ſearch ſo far off,---our own Nation affords us (perhaps) the moſt notable and numerous Examples of *Royal Juſtice* in this kind of any in the world. For we find it Recorded in that Antient Law-Book, Entituled The *Mirrour of Juſtices* (moſt of which is ſaid to be Compiled before the *Conqueſt*, and Augmented by the Learned *Andrew Horn* in the Reign of K. *Edw.* the Iſt. and which is often Cited by the Famous Lord *Coke*, and to this day continues in good Repute amongſt Lawyers) That King *Alfred*, a Renowned *Saxon*-Prince, who Governed this Realm about the Year of our Lord 900. did in one years ſpace bring to Condign puniſhment, *no fewer than four and forty of his Juſtices*, (ſo the Law Terms thoſe we call Judges; and this was long before, either Juſtices of the Peace Eſtabliſht, or the Courts fixed at *Weſtminſter*: But Juſtice was in thoſe days Adminiſtred in the Countrey, in Neighbouring Courts, which yet (as appears by the nature of the offences alledged againſt them) had *jus vitæ & necis*, *power of life and death*, and ſo may properly be

called

called Judges) whose Names and particular Crimes here follow in the words of that worthy Author, *p.* 296. of the *French*, and *p.* 239 of the *English* Edition.

It is an abuse that Justices and their Officers who kill People by *false judgment*, be not destroyed, which King *Alfred* caused to be done, who caused **forty four Justices** in one year, to be hanged as *Murderers* for their *false judgments*.

1. He hanged *Darling* because he judged *Sidulf* to death, for the retreat of *Edulf* his Son, who afterwards acquitted him of the Fact.

2. He hanged *Segniar*, who judged *Ulf* to death after sufficient *acquittal*.

3. He hanged *Cadwine*, because that he judged *Hachwy* to death without the *Consent of all the Jurors*; for whereas he had put himself upon a jury of *Twelve-men*; & because that three would have saved him against the *Nine*: *Cadwine* removed the *three* and put *others* upon the jury, upon whom *Hachwy* put not himself.

4. He hanged *Cole*, because he judged *Ive* to death when he was a *Mad-man*.

5. He hanged *Malme*, because he Judged *Prat* to death upon a false suggestion that he committed the felony.

6. He hanged *Athulf*, because he caused *Copping* to be hang'd before the Age of one and twenty years. [It was against Law then, but now *nequitia supplet Ætatem.*]

7. He hanged *Markes*, becuse he judged *During* to death by twelve men that were not *sworn*.

8. He hanged *Ostline*, because he judged *Seaman* to death by a false Warrant, grounded upon false suggestion, which supposed *Seaman* to be a Person in the warrant, which he was not.

9. He hanged *Billing*, because he judged *Leston* to death by fraud: In this manner, he said to the People, *sit* all ye here but he who killed the man, and because that *Leston* did not sit with the other, he commanded him to be hanged, and said that he did assist, where he knew he did not assist to kill the Party.

10. He hanged *Seafoul*, because he judged *Ording* to death, as not answering.

11. He hanged *Thurston*, because he judged *Thurgner* to death by a Verdict of Inquest, taken *ex officio*, without *Issue* joyned.

12. He hanged *Athelston*, because he judged *Herbert* to death for an offence not mortal.

13. He hanged *Rambold*, because he judged *Leschild* in a Case not notorious, without *Appeal*, and without *Indictment*.

14. He hanged *Rolf*, becauſe he judged *Dunſton* to dye for an eſcape out of priſon.

15. He hanged *Frebern*, becauſe he judged *Harpin* to dye, whereas the Jury were in *doubt of their verdict*, for in doubtful caſes one ought rather to ſave than condemn.

16. He hanged *Seabright*, who judged *Athebrus* to death, becauſe he had diſcharg'd one that had given a falſe judgment in a Caſe Capital.

17. He hanged *Hale*, becauſe he ſaved *Triſtrain* the Sherif from death, who took to the Kings uſe from another goods againſt his will, for as much as any ſuch taking from another againſt his will, and *Robbery* hath no difference.

18. He hanged *Arnold*, becauſe he ſaved *Bailifs*, who robbed the people by colour of *Diſtreſſes*; ſome by ſelling *Diſtreſſes*, ſuch, and others by *extortion of* Fines; becauſe between ſuch tortious Acts and Robbery there was no difference.

19. He hanged *Erkinwald*, becauſe he hanged *Frankling*, for nought elſe, but becauſe he taught to him who vanquiſhed him by *Battle*-mortal to ſay the word *Cravant*.

20. He hanged *Bermond*, becauſe he cauſed *Garbot* to be beheaded by his judgment in *England*, for that, for which he was *outlaw'd* in *Ireland*.

21. He hanged *Alkman*, becauſe he ſaved *Cateman* by colour of *Diſſeiſin*, who was Attainted of *Burglary*.

22. He hanged *Saxmond*, becauſe he hanged *Barold* in *England* where the Kings Writ runneth for a fact which he did in the ſame Land, where the Kings Writ did not run.

23. He hanged *Alflet*, becauſe he judged a *Clerk* to death over whom he had no Cognizance.

24. He hanged *Piron*, becauſe he judged *Huntiny* to death; becauſe he gave judgment in Appeal before the *forty days* pendant; the Appeal by a Writ of falſe judgment before the King.

25. He hanged *Delani*, becauſe he cauſed *Eldons* to be hanged, who kill'd a man by misfortune.

26. He hanged *Oſwin*, becauſe he judged *Fulcher* to death out of Court.

27. He hanged *Mucdin*, becauſe he hanged *Helgrave* by warrant of Indictment not ſpecial.

He hanged *Horn*, becauſe he hanged *Simin* at days forbidden.

29. He hanged *Wolmer*, becauſe he judged *Grant* to death by colour of a Larceny, of a thing which he had received by Title of Bailment.

30. He

30. He hanged *Therberne* becauſe he Judged *Ofgot* to death for a Fact whereof he was *Acquitted before* againſt the ſame Plaintiffe; which Acquittance he tendred to averre by *Oath*, and becauſe he would not averre it by *Record*, *Therbern* would not allow of the Acquital which he tendred him.

31. He hanged *Wolſton* becauſe he adjudged *Howbert* to death at the ſuit of the King, for a fact which *Howbert* confeſt, and of which the King gave him *his Pardon*, but he had no Charter thereof; nevertheleſs he vouched the King to *Warrant* it, and further tendred to averre it by Enrollment of the Chancery.

32. He hanged *Oskitell* becauſe he Judged *Cutlinge* to death by the Record of the *Coroner*, where by Replication allowable, the Plea did not hold; And the Caſe was ſuch, *Cutling* was taken and Tortured ſo much, as he confeſſed he had Mortally offended, only to be quitted of the pain; and *Oskitell* adjudged him to death upon ſuch his Confeſſion which he had made to the Coroner, without trial of *the truth* of the Torture or the *Fact*. And further the ſaid King cauſed the *Coroners* and *Officers* Acceſſories to be apprehended who hanged the people, and all thoſe that might have hindred the falſe Judgment, and did not hinder the ſame in all caſes: For he hanged *all the Judges* who had falſely *ſaved any man* guilty of Death; or hath falſely hanged any man *againſt Law*, or any reaſonable *Exception*.

He hanged the Suitors of *Calevot*, becauſe they had adjudged a man to death in a caſe *not notorious*, although he were guilty thereof; for no man can Judge within the Realm but the King, or his Commiſſaries, except thoſe Lords in whoſe Lordſhips the Kings Writ doth not run.

He hanged the *Suitors* of *Dorceſter*, becauſe they Judged a man to death by Jurors in their Liberty for a Felony done out of it, and whereof they had not the *Conuſance* by reaſon of *forraignty*.

He hanged the *Suitors* of *Cirenceſter*, becauſe they kept a man ſo long in Priſon, that he dyed in priſon, who would have acquitted himſelf by *Forraigners* that he offended not Felonioully.

['Tis ſuppoſed theſe Suitors of each place were Four in Number, which compleats the number of 44. Hanged in all.]

In his time also the *Suitors* of *Doncaster* lost their Jurisdiction, besides other Punishments, because they held Pleas forbidden by the Customs of the Realm to Ordinary Judges and Suitors to hold.

In this time *Colgrin* lost his Franchise of *Enfangthief*, because he would not send a Thief to the common Gaole of the County, who was taken within his *Liberty*, and not Bailable.

In this time *Buttolph* lost his view of *Frankpledges* because he charged the Jurours with *other Articles* than those which belonged to the *View*, and *Amerced* people in personal Actions where one was not to be amerced by a pecuniary Punishment: And accordingly he caused punishments of Death to Criminal Judges for wrongful mortal Judgements, and so he did proportionably for wrongful Judgements of a lesser nature: As Imprisonment for wrongful Imprisonments, and and like for like with the other Punishments; for he delivered *Thelweld* to Prison, because he Judged men to Prison for Offences where they ought not to be Imprisoned.

He Judged *Lithing* to Prison because he imprisoned *Herbote* for the Offence of his *Wife*.

He Judged *Rutwood* to Prison because he Imprisoned *Old* for the Kings *Debt*.

[Note, In those days people were not to be Imprisoned for Debt, but only their Goods distrain'd.]

On the other side, he Cut off the Hand of *Haulf*, because he saved *Armorks* Hand, who was Attainted before him, that he had Feloniously wounded *Richbold*.

He Judged *Edulfe* to be wounded, because he Judged not *Arnold* to be wounded, who had Feloniously wounded *Aldens*.

In lesser Judgments he did not meddle with the Judgments; but Disinherited the Justices, and Removed them according to the Points of those Statutes, where he could understand that they had Transgressed their Jurisdiction, or the Bounds of their Delegacy or Commission; or had concealed Fines or Amerciaments or ought that belonged to the King, or had Released or *Increased any Punishment contrary to Law*, or procured Pleadings without Warrant, *&c.*

Thus far *Horns Mirrour*.

Now

Now that this *Alfred* was one of the *Wiſeſt* and moſt Renowned Kings that ever this Land was happily Governed by, appears, as well by the *Eulogies* given him by the Ancients, as thoſe Encomiaſtick Verſes Dedicated to his Memory, by a preſent *Ingenious Courtier*, Sir *Winſton Churchill*, Kt. in his *Diæ Britannicæ*, Fol. 140.

Who would not follow him into the Field,
Who cannot chooſe but Conquer tho he yield?
Whoſe Sword cut deep, yet was his Wit more keen,
Some Fence 'gainſt that; But this did wound unſeen,
To thee is due (Great Elfrid!*) double praiſe;*
To thee we bring the Laurel *and the* Bayes.
Maſter of Arts *and* Arms, Apollo *ſo*
Sometimes did uſe his Harp, *ſometimes his* Bow,
And from the other Gods got this Renown
To Reconcile the Gauntlet *to the* Gown.
But who did e're with the ſame Sword like Thee,
Execute Juſtice, *and the* Enemy?
Keep up at once the Law of Arms *and* Peace,
And from the Camp *Iſſue out* Writs of Eaſe.

The next Engliſh Prince of *Renown* before the *Norman Conqueſt*, was King *Edgar*, about the year 960. Amongſt whoſe Noble Acts 'tis recorded as none of the leaſt memorable, that in his Circuits and Progreſſes through the Countrey, he would take Account of the *Demeanour* of his Lords, and eſpecially of his *Judges*, whom he *ſeverely Puniſhed*, if he found them Delinquents: *Bakers Chron.* Fol. 11.

Nor have the beſt and wiſeſt of our Princes ſince the Conqueſt, been leſs ready to give up Ill Judges to juſt Puniſhment, nor our *Engliſh* Parliaments wanting to bring them to it.

In the yeat 1290. being (ſaith *Walſingham*, p. 54.) the 17th year of *Edw.* 1. *Juſtitiarios ferè omnes de falſitate deprehenſos a ſuo Officio depoſuit ipſos juxta merita puniens gravi Mulctâ. He finding almoſt all his Judges guilty of Corruption, put them out of their places, and Puniſht them according to their Demerits with heavy Fines.* Which the Lord *Cook* in the Second part of his *Inſtitutes*, *Fol.* 508. likewiſe takes notice of, and tells us, That this was done *by a Parliament* held after the Feaſt of St.

St. *Hillary*, and only two Judges ſcap'd ſcot-free. But how ſevere the Fines of the other Delinquents were, appears in *Bakers Chronicle*, fol. 100. Sir *Ralph de Hengham* (ſays he) Chief Juſtice of the *Kings-Bench*, for Corruption was Fined 7000 Marks; Sir *John Lovetot* one of the Juſtices of the *Common Pleas* 3000 Marks; Sir *William Brompton* 6000 Marks; Sir *Solomon Rocheſter* 4000 Marks; Sir *Richard Boyland* 4000 Marks; Sir *Walter Hopton* 2000 Marks; Sir *William Saham* in 3000 Marks; *Robert Lithbury* Maſter of the Rolls in 1000 Marks; *Roger Leiceſter* in 1000 Marks; *Hugh Bray* Eſchéator and Judge for the *Jews*, 1000 Marks; But Sir *Adam Stratton* Chief Baron of the *Exchequer* (who it ſeems had been a notable *Bribe-fingerer*) *four and thirty Thouſand* Marks, [*A prodigious Summe allmoſt 400 years ago!*] And Sir *Thomas Wayland* Chiefe Juſtice of the *Common-Pleas* being found the greateſt Offender of all, was Attainted of Felony for taking of *Bribes*, and his Lands and Goods Forfeited: as appears in the *Pleas of Parliament*, 18 *Edw.* 1. And he was alſo Baniſht the Kingdom, as unworthy to live in that State againſt which he had ſo much Offended.

Sir *William Thorp* Chief Juſtice of the *Kings-Bench* in K. *Edw.* the Thirds time, having of five ſeveral perſons received five ſeveral Bribes, which in all amounted to 100 *l.* was for this alone adjudged to be Hang'd, and all his Goods and Lands Forfeited.

The reaſon of the Judgment is entred in the Roll in theſe words —— *Quia prædictus Willielmus Thorpe qui Sacramentum Domini Regis erga populum ſuum habuit ad Cuſtodiendum, fregit malitioſè, falſè & Rebelliter quantum in ipſo fuit.* *Becauſe that as much as in him lay, he had broken the Kings Oath made to the People, which the King had Intruſted him withall.*

And ſo much did the then Collective Wiſdom of the Nation reſpect Judges herein, that 'tis expreſly entred, that this Judgment ſhould not be drawn into example againſt any other Officers who ſhould break their Oaths, but only againſt thoſe, *Qui predictum Sacramentum fecerunt et fregerunt, et habent Leges Angliæ ad Cuſtodiendum.* That is, only to the Judges that violate their Oaths, having the Laws of *England* Entruſted unto them.

This

This *Judgment* was given 24 *Edw.* 3*d.* The next year in the Parliament 25 *Edw.* 3. *Numero* 10. it was debated in Parliament, Whether this Judgment was Legal, and *Nullo Contradicente*, unanimouſly *it was declared to be juſt and according to the Law*, and that the ſame Judgment may be given in time to come upon the like occaſion. Which Caſe, I humbly conceive, reſolves the Caſe in Law *Point Blank* thus: *That it is death for any Judge wittingly to break his Oath in any part of it.* This Oath of *Thorp* is entred in the *Roll*, and is the ſame *verbatim*, with the Judges Oath in 18 *Edw.* 3: The ſame too (as I humbly conceive) which our Judges now a days take, and is herein afterwards punctually recited.

The Oaths of our Judges of *England*, as they bind them to the *due Adminiſtration of Juſtice to the Subject, according to the Laws*, (which are every *Free-mans* Birth-Right) ſo alſo, as they be of the Kings Council, they are by ſuch their Oaths oblig'd, *lawfully to counſel him*, that is, whenever their opinions are demanded, they are ſworn and bound to deliver them *according to the Law*.-- Let us ſee how our *Anceſtors* reſented theſe matters.

In a Parliament held in the 11*th* year of *Richard* the 2. there was Judgment of *High-Treaſon* given againſt 18 ſeveral Perſons, and all, ſave one of them, of Eminent Rank; Three Privy Counſelors, *viz.* The *Archbiſhop of York*, The *Duke of Ireland*, and *Earl of Suffolk*, the *Biſhop of Exeter*, the *Kings Confeſſour*, *Five Knights*, of whom ſome had been Servants to *Edw.* the 3. and all, but one, Servants to the then King, and ſome of them of Noble Deſcent; but that which I more particularly obſerve, there were amongſt them Six *Judges*, and *Locton* the Kings *Serjeant at Law*; *Blake* of the Kings *Council at Law*, and *Uſk* the under-*Sheriff* of *Middleſex*.

Of theſe 18, 8 were Executed, that is, Sir *Robert Treſilian*, the *Lord Chief Juſtice* was drawn from the *Tower*, through the midſt of *London*, to *Tyburn*, and there *Hanged*; ſo likewiſe were *Uſk* and *Blake*, and *Sir John Salisbury*; but the other 4 *Knights* had the Favour to be *Beheaded*.

Three, that is, the Archbiſhop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, died miſerable Fugitives in forreign Parts.

The other ſeven (whereof five were *Judges*) with much ado got a Pardon as to Life, but were baniſhed, and their Lands and

Goods all forfeited; and it was made Felony for any to procure their Recalling home, and themſelves forthwith to be executed as Traytors, if at any time they ſhould preſume to return.

And of theſe eighteen Perſons, all ſave three were impeached by the *Commons*.

The *Offences* which procured theſe *Exemplary Puniſhments*, were briefly theſe:

King *Richard* the II. being an unthinking diſſolute Prince, by the ill counſel of ſome near his Perſon, there had during his minority happened divers miſcarriages in the Government: To redreſs which, in a Parliament holden in the tenth year of his Reign, and the twentieth of his Age, a Commiſſion was awarded to *Twelve Peers*, and others of greateſt Wiſdom and Ability, impowering them to inſpect the paſt management of the *Houſhold*, the *Revenue*, the *Courts of Juſtice*, and in a word, all things that did concern the Good of the *Realm*; with full power finally to determine, and put all things in excution, ſo as might moſt tend to the *Honour* of the *King*, *Relief* of the *People*, and *Safety* of the *Land*; which *Commiſsion* was to endure onely one year.

Now come five of the Perſons above-named, *viz.* the Archbiſhop, the Duke, the Earl of *Suffolk*, the Chief *Juſtice*, and *Brembre*, who ſeeing themſelves like to be called to Account for their pernitious Counſels and Irregularities, and to be brought to deſerved ſhame and puniſhment; to avoid the ſame, and continue their Villanies for the future, they inſinuated to the King, *That this Commiſsion intrenched upon the Royal Power, and was derogatory to the Crown, that the procurers thereof had extorted His Royal Aſſent thereunto in Parliament*; and *that this was Treaſon*: for ſo the Chief *Juſtice* and *Blake* the Kings Council, who was adviſed withal in the *Writ*, declared it to be; whereupon *Blake* was commanded to prepare an Indictment of Treaſon againſt all the ſaid Commiſſioners, and againſt ſuch others as had been moſt active in procuring that Authority: Accordingly he draws the Indictment which ſtands entred in the Roll, and is to this effect, *That they the ſaid Commiſsioners, &c. had Traiterouſly conſpired among themſelves to make this Commiſsion by Authority of Parliament againſt the Royalty of the King, to his diſheriſon, and in derogation of the Crown, and that they forced the Kings Conſent, and confederated themſelves to maintain one another in ſo doing.*

It

It was designed that they should be tryed upon this Indictment in *Middlesex* or *London*, and therefore (some of the parties to be prosecuted not being Peers) *Usk* the Under-Sheriff of *Middlesex* was acquainted with the business, (who was to return a Pack'd-Jury (you see that's a very old *Game*) that might be sure to do the business, which he performing accordingly, was therefore *hang'd*.

But further, the five grand *Favourites*, that the King might the more confide in their Counsels, (for so are the words of the *Record*) and that under colour of Law, they might cover their malice from the King and the Kingdom, before the Trials were to be brought on, advise the King to demand the Opinion of some of the *Judges*, that is, of the two *Chief Justices* and *Chief Baron*, and the *Judges* of the *Common-Pleas*, six in all in number, and of *Locton* the *Kings Serjeant*; *Blake*, of the *Kings Council at Law*, was commanded to draw up those *Questions*, who did it accordingly, and for *drawing* the same, and the before-mentioned Indictment, he was himself *Drawn* and *Hanged*.

The *Questions* being prepared in Writing; the *Judges* were sent for to *Nottingham Castle*, where in the Kings own Presence, they were commanded upon their *Allegiance* to deliver their Opinions,

1. *Whether the Commission was derogatory to the Rights of the Crown?* They answered, *It was.*
2. *Whether the perswading and urging the King to consent thereunto in Parliament, was Treason?* They answered, *That it was.*

Here were other *Questions* ask'd, but these were the Main, and *those for which they were condemned*, as appears by the Replication of the *Commons* to the *Judges Answer*, and by the Words of the *Judgment* —— *That they the said* Judges *knew that this Commission was awarded in Parliament, &c. that it was for the Publick Good; That they knew of the Traiterous Intent to destroy the Procurers of this Commission; That they knew the Law, and that it was not Treason, and had delivered such Opinions thereby, under colour of Law, to cover their Treasonable Intent*, and therefore Judgment of *High-Treason* was given against them, and against *Locton* the Kings *Serjeant*, who had Subscribed these False Opinions with the *Judges*. And though there be other Articles against the *Rest*, yet this alone is adjudged *Treason*, in the several *Judgments* against every one of the Eighteen: And 'tis observable, *That in all these Judgments, they are adjudged*

ed Traitors as well against the Perſon of the King, as againſt the Common-wealth.

And it is there declared upon great Advice taken, *That in Treaſons which concern the King and Kingdom, they are not bound to proceed according to the Rules of the Common-Law, but according to the Courſe of Parliaments, ſo as may be for the Common-Good.* Nor were theſe *Iudgments* huddled up in haſte, but given upon long and mature Deliberation, *the Work of a Whole Parliament.* And it is declared in the *Roll*, *That they ſpent long time, and took great pains in examining the Evidence*, the better thereby to ſatisfie their own Conſciences and the World. Their Proceedings againſt the five Plotters were begun the 14 of *Novemb.* and the *Iudgments* were not given till the 15 of *Feb.* following, which is a *Quarter* of a *Year.*

'Tis alſo to be obſerved, *That ſeveral of theſe Iudges were very unwilling to give their* Corrupt Opinions, *but were* menaced *and* violently *drawn thereunto by the Duke of* Ireland *and others.* And at their *Trials*, they ſeverally Alledged, *That in part* Violence *had been offered to their Perſons, becauſe they had deferred the delivery of their Opinions.* But as *Fear* or *Cowardice* is no *Plea* for delivering up of the *Forts* or *Bulwarks* of the *Kingdom*, ſo neither is it for *baſely betraying our Rights and Liberties.* Theſe Allegations of being *threatned from their Duty*, could not excuſe them from the *Rope*: but how much more then do they deſerve it who ſhall preſume to do as bad things or *worſe*, without any *Menaces* at all, but wilfully and preſumptuouſly, purely out of their own baſe inclinations?

But *Treſilian* was not the onely Iudge which our *Engliſh Hiſtory*, even ſince the Conqueſt, mentions to have been executed for irregular Practices: For in the Reign of King *Henry* the Seventh, a *Wiſe* but *Avaritious* Prince, there were two Gentlemen of the Long Robe, that for private Intereſt, and to ſerve the Kings preſent *Turn*, were ready to diſpence with their *Oaths*, and the known Fundamental Laws. But as they liv'd *hated* during his time, ſo they died *unlamented* under his Succeſſor, being given up a neceſſary *Sacrifice* to *Publick Iuſtice.*

Their *Names* were, Sir *Richard Empſon* Knight, and *Edmund Dudley*, both (ſaith Sir *Richard Baker*, fol. 247.) *Lawyers*, and both of them *Barons* of the *Exchequer*, and *Iuſtices* of the *Peace* throughout *England*: *Dudley* of a good Family, but *Empſon* the Son of

a

a *Sieve-maker*: So true is that Remark of the *Poet*;

Mendico aſperius nihil eſt cum ſurgit ad Altum.

There is no Perſon in the World more *Haughty*, or an *Aptter Tool* for Oppreſſion, than a *Beggars Brat*, or ſome baſe *Mechanick*, *Butcherly Off-ſpring*, when undeſervedly flush'd with Preferment.

The *King* made odd Uſe of theſe Two Inſtruments. *They turn'd* (ſayes *Baker*) *Law into Rapine*. And moſt certain it is, that many ill Things they did: But the better to colour their vile Practiſes, a Statute was Provided, to Juſtify their Invaſions on the Liberties and Properties of their *Fellow-Subjects*.

We will give you an Account of this Matter, in the very Words of that Great *Oracle of our Law*, Sir *Edward Cook*. But firſt, hear how Sir *Richard Baker*, in his *Chronicle*, *fol.* 247. repreſents them:

"Their Manner was (*ſaith he*) to cauſe divers Subjects to "be Indicted of Crimes, and then preſently to Commit them, and "not Produce them to their Anſwer, but ſuffer them to Lan-"guiſh long in Priſon; and by ſundry Artificial Devices and "Terror, extort from them great *Fines*, which they termed *Com-"poſitions* and *Mitigations*. Neither did they (towards the End) "obſerve ſo much as the Half-Face of *Juſtice*, in Proceeding by "Indictment; but ſent forth their Precepts to Attach Men, "and Convent them before Themſelves, and ſome Others, at "their private Houſes; and there ſhuffle up a Summary "Proceeding by Examination, **without Tryal by Jury**; "aſſuming to themſelves to deal both in *Pleas of the Crown*, and "*Controverſies Civil*. Then did they alſo uſe to Enthral, and "Charge the Subjects Land with Tenures *in Capite*, by finding "Falſe Offices, refuſing upon divers Pretexts and Delayes, to "admit Men to Traverſe thoſe Falſe Offices. Nay, contrary "to all Law and Colour, they maintain'd, That the *King* ought "to have the Half of Mens Lands and Rents, during the Space "of full Two Years, for a Pain, in caſe of *Outlawry*. They "would likewiſe *Ruffle* with *Jurors*, and enforce them to Find, "as they would Direct: And if they did not, then Convent, "Impriſon, and Fine them. Theſe, and many other Cour-"ſes they had, of Preying upon the People, and had ever a "*Rabble* of *Promoters*, and *Leading Jurors* at their Command, ſo

" as they could have *any Thing* found, either for *Fact*, or *Valu-*
" *ation.*

Thus far the *Historian*. Now, take the Relation of the Reverend Judge **Cook**, in his ever-valuable Works, Commenting in the *Second Part* of his *Institutes* on that GOLDEN *Nine* and *Twentyeth Chapter* of **Magna Charta**; which being of *Inestimable Value*, I take it for granted, no True *English Man* will any more grudge the *Reading*, than I do the *Recital* of it; and I wish it might every *Market-Day*, be repeated with a *Speaking-Trumpet*, in every Town and Corporation of this Kingdom. The Words run thus:

Nullus Liber Homo, &c.

" No Free-Man shall be Taken, or Imprisoned, or Dissei-
" sed of his Free-Tenement or Liberties, or Free-Customs;
" or be Out-law'd, or Exil'd, or in any manner Destroy'd:
" Nor will we pass upon him, nor send any (*to pass*) upon
" him: But by the Lawful Judgment of his **Peers**, or by
" the Law of the Land. We will *Sell* to none, we will *Deny* to
" none, nor to any *delay Justice* or *Right*.

Discourring, I say, upon this most Comprehensive Text, the *Corner-Stone* of all our *English* Freedoms, my Lord *Cook*, 2 *Instit. fol.* 51. thus expresses himself:

Against this Antient and Fundamental Law, and in the Face thereof, I find an Act of Parliament made 11 H. 7. Cap. 3. *That as well Justices of Assize, as Justices of the Peace, (without any Finding, or Presentment by the Verdict of Twelve Men) upon a bare Information for the King, before them made, should have full Power and Authority, by their Discretions, to Hear and Determine all Offences*, &c.

And *Fourth Part*, *Instit. fol.* 39. he gives a further Account of, and Recites this Act thus:

" There was an Act of Parliament made in the 11 *H.* 7.
" which had a *Fair*, *Flattering* Preamble, pretending to avoid
" divers Mischiefs, which were, 1. The High Displeasure of
" Almighty *God*. 2. The great Let of the Common-Law.
" And, 3. The great Let of the Wealth of this Land. And
" the Purview of that Act tended in the Execution contrary,
" *Ex Diametro*, viz. To the Displeasure of Almighty *God*, The

" great

"great Let, nay, the utter Subversion of the Common-Law,
"and, The great Let of the Wealth of this Land; Which Act
"followeth in these Words:

THe King our Soveraign Lord, calling to his Remembrance, That many good Statutes, and Ordinances be made for the Punishment of Riots, and unlawful Assemblies, Retainders in giving, and receiving of Liveries, Signs, and Tokens unlawfully, Extortions, Maintenances, Imbracery, Excessive taking of Wages contrary to the Statute of Labourers and Artificers, the Use of unlawful Games, Inordinate Apparel, &c. to the displeasure of Almighty God, &c. notwithstanding that generally, by the Justices of the Peace, in every Shire within this Realm in the open Sessions, it is given in Charge to inquire of many Offences committed, &c. and divers Inquests thereupon straightly Sworn, and Charged before the said Justices to inquire of the Premisses, and therein to present the Truth, which they letted to be found by Imbracery, Maintenance, Corruption, and Favour; by occasion whereof, the said Statutes be not nor cannot be put in due Execution: For Reformation whereof, forsomuch that before this time the said Offences, Extortions, Contempts, &c. might not, nor as yet may be conveniently Punished by the due Order of Law, except it were first found, and presented by the Verdict of Twelve Men thereto duely Sworn, Who for the Causes before Rehearsed will not find, nor present the Truth; Wherefore be it by the Advice, and Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by Authority of the same Enacted, Ordained, and Established: That from henceforth, as well the Justices of Assize, as the Justices of the Peace, in every County of the said Realm upon Information [Note, it was to be without any Presentment, or Indictment found by any Grand or Petty Jury] for the King, &c. shall have full Power, & Authority by their Discretion to hear, & determine all Offences, &c.

Here you ſee Matters were left to be determined by Judges, and Juſtices **without Juries**, in a Summary, Chancery-Method, only according forſooth! to their Diſcretion: Yet ſtill there was a *Proviſo*,

That no ſuch Information ſhould extend to Treaſon, Murder, or Felony; nor to any other Offence, for which any Perſon ſhould loſe Life or Member: Nor to loſe by, or upon the ſame Information, any Lands, Tenements, Goods, or Chattels, to the Party making the ſame Information.

[*Which deſerves Particular Notice:*] Yet obſerve, how the ſame *Reverend Lord* **Cook**, in the Place before-cited, deſcants on this Act.

By Pretext (ſaith he) *of this Law*, Empſon *and* Dudley *did commit upon the Subject unſufferable Preſſures and Oppreſſions; and therefore, this Statute was Juſtly, ſoon after the Deceaſe of* Henry the Seventh, *Repeal'd by an Act of Parliament*, 1 H. 8. Cap. 8. *A good Caveat to Parliaments, to leave all Cauſes to be meaſured by that* Golden, *and Strait-Mete-Wand of the* Law, *and not to the Incertain and crooked Cord of* Diſcretion.

It is not almoſt Credible, (continues the ſame Judicious Author) *to fore-ſee, when any Maxim, or* Fundamental-Law *of this Realm* [He means, as to this particular Caſe, *Tryals per Pais*, that is, by *Juries*] *is Altered, what dangerous Inconveniences do follow. Which moſt expreſly appears by this* **Moſt Unjuſt & Strange Act:** *For hereby, not only* Empſon *and* Dudley *themſelves; but ſuch* Juſtices of Peace, *Corrupt Men as they cauſed to be Authorized, Committed moſt grievous and heavy Oppreſſions and Exactions, Grinding of the Faces of poor Subjects by Penal Laws, be they never ſo Obſolete, or unfit for the Time.* [Suppoſe, for a Parallel in our Times, putting the Statutes againſt *Popiſh Recuſants*, in Execution againſt *Proteſtant Diſſenters*, at a Juncture when *Popery* was juſt ready to over-run us all] *by Information only, without any Preſentment or* Tryal by Jury, *being* **The Antient Birth-Right of the Subject:** *But to Hear and Determine the ſame, by their Diſcretion. Theſe, and other like Oppreſſions and Exactions by, or by Means of* Empſon *and* Dudley, *and their Inſtruments, brought Infinite Treaſures to the* King's *Coffers; whereof the* King, *in the End, with great Grief and Compunction, Repented.*

This

This Statute of 11 H. 7 we have Recited, and shewed the Inconveniencies thereof; to the end, that the like should never hereafter be attempted in any Court of Parliament: And that others might avoid the Fearful End of these Two Time-Servers, Empson and Dudley.

Thus far that *Oracle of our English Laws*. Wherein be pleased to observe:

First, That he sticks not to call even an *Act of Parliament*, most **Unjust and Strange**: And in the *Second Part* of his *Institutes*, *fol.* 51. **Unjust and Injurious**; because it Altered a *Fundamental Law* of the Realm, *viz.* Denyed *Tryal by Juries*, a most Essential Part of **English Freedom**, and never to be parted with.

Secondly, Observe what became of these *Two* Wicked Men, though they had such a Colour of Law to bear them out: They were, in the Beginning of the Reign of King *Henry the Eighth*, (first) *Indicted* for other base Practises, in Finding of *False Offices* for the *King*, to the Dammage and Disherison of His Subjects: Which *Indictment* ran as follows, (see *Cook's Instit. Part the Fourth*, *fol.* 198.)

Juratores præsentant quod Richardus Empson *nuper de* London *Miles*, &c.

In *English* thus:

The Jurors present, That Richard Empson, late of London, Knight, late Counsellor of the most Excellent Prince, Henry the Seventh, late King of England, on the Tenth Day of May, in the Twentyeth Year of the said late King, and divers Times before and after, at London, &c. Not having God before his Eyes; but as the Son of the Devil, imagining the Honour, Dignity, and Prosperity of the said late King; and the Prosperity of his Kingdom of England, not at all to Value or Regard: But to the end, that he might obtain to be a more Singular Favourite of the said late King, whereby he himself might be made a Noble or Great Man, and Govern the whole Kingdom of England at his Pleasure; Falsly, Deceitfully, and Treasonably Subverting the Law of England, did (amongst other Things) the Day and Year afore said, at London, in the Parish and Ward afore said, procure, and cause to be found divers false Inquisitions, and Offices of Intrusions, and Alienations of

divers Leige-Subject's Mannors, Lands, and Tenements; that they held the Mannors, Lands, and Tenements in those Inquisitions specified of our Lord the King, in Capite, or otherwise; when in Truth it was not so. And afterwards, when the said Leige-Subjects of our Lord, the late King, would have tendered and alledged Traverses to the said Inquisitions, in the Court of Him, the said late King, according to the Law of England; they could not be admitted to those Traverses: But he, the said Richard Empson, debar'd and delay'd them from the same, 'till they had agreed with him, to pay divers Great and Insupportable Fines and Redemptions; as well for the Profit of the said late King, as for the proper, private Advantages of him, the said Richard; to the great Impoverishment of the said Subjects. And that the said Richard, the Day and Year afore-said; in the Parish and Ward afore-said, and several Times before and after, divers Leige-Subjects of the said late King, holding of our said Lord the King, divers Mannors, Lands, and Tenements, by Knight's-Service, and themselves being (by the Death of their Ancestors) under Age, and so in the Wardship of the King, by Reason of their Tenure, when they came to lawful Age, and ought to have had due Livery of their Mannors, Lands, and Tenements, according to the Custom and Law of England, and would have Prosecuted the same according to the Course of Chancery; did refuse them so to do, and totally deny and exclude; until they had made with him, the said Richard, divers great Fines and Redemptions, more than they could bear; as well for the Gain of the said late King, as for the private Benefit of him, the said Richard: Whereby many of the said late King's People were by such Grievances, and Unjust Extortions many Ways vexed: Insomuch, that the Subjects of the said late King, did manifoldly murmur, and bear ill Will against the said late King; to the great Peril of him, the said late King, his Kingdom of England, and the Subversion of the Laws and Customs of this Realm.

'Tis true, (saith my Lord *Cook*, *Fourth Part* of his *Institutes*, *fol.* 41.) *in this* Indictment [Which, *Mutatis mutandis*, we are to suppose, was alike against *Dudley*] *the Word* **Proditorie**, [That is to say, **Treasonably**] *was used but for Aggravation, and as a Preparative (for a Prosecution) to Greater Offences. For they were not to escape with a Charge of* Misdemeanor *only: But in the same Year, they were both Indicted of* High-Treason, *both by the Common-Law, and Act of* Parliament. *And in the Second Year of King* Henry the Eighth, *they both* Lost their Heads.

Thus, that *Profound Judge* speaks of them, who 4. *Instit. fol.* 41, concludes the Story of these Time-serving, Self-designing *Judges*, with this most remarkable *Epiphonema*: *Qui eorum vestigiis insistent, eorum Exitus prehorrescant*; *Those that shall dare tread their Steps, let them dread* (or expect) *the like dismal Ends.*

Sir

Sir *Richard Baker*, the *Beſt* perhaps (for want of a better) of our *Modern Engliſh Hiſtorians*, gives ſomewhat a more particular Account of the Fate of theſe Two Corrupt *Hucksters of Law and Juſtice*: Which be pleas'd to Peruſe in his own Words, *fol.* 254.

Speaking of King *Henry* the *Eighth*'s general *Pardon*, at his firſt coming to the Crown, and how he Ordered *Reſtitution* to be made, of all Goods unjuſtly taken from any. He Adds:

"And becauſe the Inſtruments of ſuch Injuſtice are **Always** "**moſt Odious**; and nothing gives the People ſo much Con"tentment, as to ſee their Perſecutors Puniſhed. He there"fore cauſed *Empſon* and *Dudley*, the Two Chief Actors of "the late unjuſt Proceedings, to be Committed to the "*Tower*, and divers of their Inferior Agents, called *Promoters* [*The Raskally Informers, Penſionary Affidavit-Men, or (if you pleaſe)* **Robin Hogg's** *of that Age*.] "As *Camby*, *Page*, *Derby*, *Wight*, "*Simpſon*, and *Storckton*, to be ſet on the Pillory in *Cornhil*, "with Papers on their Heads, and then to Ride through the "City with their Faces to the Horſe-Tails, with the ſhame "whereof, in Seven Days after they all Dyed in *Newgate*.

"Shortly after a Parliament was called; whereof Sir *Tha*"*mas Ingleby* was choſen *Speaker*: And therein *Empſon*, and *Dud*"*ley* were Accuſed of High-Treaſon, and after Arraigned; *Ed*"*mund Dudley*, in *Guild-Hall*, on the *Seventeenth* of *July*; and Sir "*Richard Empſon* at *Northampton*, in *October* following. And on "the *Seventeenth* of *Auguſt*, the Year following, [*Which was* "*Anno Domini*, 1510.] they were both of them Beheaded on "the *Tower-Hill*; and their Bodies and Heads Buryed, the one "at *White-Fryars*, the other at the *Black*.

And alſo, by an Act of 1 *H.* 8*th. Cap.* 6. the before-recited Injurious Statute of 11 *H.* 7. was made void, and repeal'd; and the Reaſon thereof is yielded, for that by Force of the ſaid Act it was manifeſtly known, that many Siniſter and Crafty, Feigned, and Forged Informations, had been purſued againſt divers of the *King*'s Subjects, to their great Dammage and wrongful Vexation.

For it is not Credible, (ſaith the Lord *Cook*, *Second Part* of his *Inſtitutes*, fol. 51.) *What horrid Oppreſſions and Exactions, to the toubling of Infinite Numbers of People, were Committed by Colour of*

that Act, ſhaking the Fundamental-Law of the Land: The ill Succeſs whereof, and the Fearful Ends of theſe Two Oppreſſors, ſhould deter others from Committing the like; and admoniſh Parliaments, That inſtead of this Ordinary and Precious *Tryal*, per Legem Terræ, *they bring not in Abſolute and Partial Tryals by Diſcretion.*

So much touching *Empſon* and *Dudley*, thoſe Names of *Ignominy* and *Deteſtation*. Let us now proceed to the *Famous Caſe of* **Ship-Money**, in the Reign of King *Charles the Firſt*, and the Extrajudicial and *Illegal* Opinions of the **Judges** therein Delivered, with the diſmal *Conſequences* thereof, as well to themſelves, as to the *King*, and whole Realm.

KING **Charles the Firſt** came to the Crown 27 *March*, 1625. In the *Three Firſt* Years of His Reign, he call'd *Three ſeveral Parliaments*; but none of them Complying to give ſo much *Money*, as was Expected: But rather inſiſting upon Complaints againſt *Buckingham*, the then Grand *Favourite*, and to have *Publick Grievances* Redreſſed, They were all *Diſſolved* in Diſcontent; and no more *Parliaments* ſpoken of, till that of the *Thirteenth of April*, 1640. (which was likewiſe ſuddenly *Diſſolved.*) During this long Interval, or Abſence of thoſe whom the Laws had Entruſted with Keeping the *Right Keys* of the *Publick Purſe*, there were ſome that would needs be Tampering to *Pick* it; I mean, ſeveral *little Intrigues* were ſet on Foot, to Supply the *Court*, and get *Money* from the Subjects, without their *Common Conſent* in *Parliament*; (that good Old Courſe, which *Never Fail'd* any *KING*, upon any Juſt Occaſion, or where they knew it ſhould not be diverted to the *KING*'s Diſhonor, and the Nations further Grievance) Of this kind were, 1. The Privy Seals iſſued. 2. Benevolence required. 3. Commiſſions of Loan. 4. The Buſineſs of Knighthood; whereby all perſons Seiz'd of Lands and Rents of *Forty Pounds per Annum*, or upwards, were by Proclamation Summon'd, either to appear, and take upon them the Degree of Knighthood, or elſe were liable to be Fined for Reſpite of the ſame. Which (alone ſaith *Baker*, *fol.* 449.) brought an *Hundred Thouſand Pounds* or more, into the *Exchequer*.

But all this was ſtill thought too little: Theſe *Devices* might ſerve for a preſent *Shift*, once, and no more; but there wanted a *Continual Fund*, or *Conſtant Supply*, as oft as the *Court* wanted,

wanted, or thought fit to require Mony, without being beholden to Parliaments. Whereupon, 5ly. By the fatal Advice (as 'tis said) of *Noy*, the then Attorney General, the King was put upon this Project of raising Mony, by Issuing out Writs, Commanding his Subjects to be Rated, and Assessed in such and such Sums, for Building, and Equipping of *Ships*, for the publick Defence of the Kingdom: Which the said Attorney perswaded his Majesty might be Justified by antient Precedents. In pursuance hereof, the King in the *Nineth* Year of his Reign, Issued out certain Writs of that kind, to the *Sea-Ports*, and *Maritim* Parts of the Realm: And finding (for the most part) a punctual Obedience, and good Advantage thereby; it was in short time after, advised to Extend the same Charge to all the *Counties* of this Realm, though never so remote from the Seas; wherein, meeting with some that refused to pay, as Conceiving the same Unlawful, the Judges (who by their Oaths, are the Kings proper Counsellors in all difficulties concerning the Law) were to be Consulted with. So, a Letter was Written to them, from the King in these Words: [*Baker's Chron. fol.* 455.]

To our Trusty, and Well-beloved Sir John Bramston, *Knight, Chief Justice of our Bench; Sir* John Finch, *Knight, Chief Justice of our Court of Common Pleas; Sir* Humphrey Davenport, *Knight, Chief Baron of our Court of Exchequer; And to the rest of the Judges of our Court of Kings Bench, Common Pleas, and the Barons of our Court of Exchequer.*

Charles Rex.

TRusty and Well-beloved, We greet you well; Taking into our Princely Consideration, that the Honour and Safety of this our Realm of *England*, (the Preservation whereof, is Only Entrusted to our Care) was, and is more nearly concern'd, than in late or former times; as well by

divers Counſels, and Attempts to take from us the Dominion of the Seas; of which we are ſole Lord, and Right Owner, and Proprietor; and the Loſs whereof, would be of greateſt Danger and Peril to this Kingdom, and other our Dominions, and many other ways. We for the avoiding of theſe, and the like Dangers; well Weighing with our ſelf, that where the Good, and Safety of the Kingdom in general is concern'd, and the whole Kingdom in Danger, there the Charge, and Defence ought to be Borne by all the Realm in general, did for the preventing ſo publick a Miſchief, reſolve with our ſelf, to have a Royal Navy prepared, that might be of Force and Power (with Almighty *God*'s Bleſſing and Aſſiſtance) to Protect, and Defend this our Realm, and our Subjects therein, from all ſuch Perils and Dangers: And for that purpoſe, we Iſſued forth Writs under our great Seal of *England*, Directed to all our Sheriffs of our ſeveral Counties of *England*, and *Wales*; Commanding thereby all our ſaid Subjects in every City, Town, and Village, to provide ſuch a Number of Ships well-furniſh't, as might ſerve for this Royal Purpoſe; and which might be done with the greateſt Equality that could be. In performance whereof, though generally throughout all the Counties of this our Realm, we have found in our Subjects, great Chearfulneſs, and Alacrity; which we Graciouſly Interpret as a Teſtimony, as well of their Dutiful Affection to us, and our Service, as of the Reſpect they have to the Publick, which well becometh every good Subject. Nevertheleſs, finding that ſome few happily out of Ignorance, what the Laws and Cuſtoms of this Realm are, or out of a deſire to be eaſed in their Particulars, how General ſoever their Charge be, or ought to be, have not yet Paid, and Contributed to their ſeveral Rates, and Seſsments that were ſet upon them. And foreſeeing in our Princely Wiſdom, divers Suits and Actions, are not unlike to be Commenced, and Proſecuted in our ſeveral Courts at *Weſtminſter*; We deſirous to avoid ſuch Inconveniencies, and out of our Princely Love, and Affection to all our People, being willing to prevent ſuch Errors as any of our Loving Subjects may happen to run into; have thought fit, in a Caſe of this Nature, to Adviſe with you our Judges, who we doubt not are well Studied, and Informed in the Rights of our Sovereignty; and becauſe the Tryals of our ſeveral Courts, by the Formalities in Pleading,

will

will require a long Protraction, We have thought fit by this Letter directed to you All, to require your Judgments in the *Case*, as it is ſet down in the Incloſed Paper; which will not only gain Time, but alſo be of more Authority to over-rule any Prejudicate Opinions of others in the Point. *Given under Our Signet, at Our Court of* White-Hall, *the Second of* February, *in the Twelfth Year of Our Reign*, 1636.

The CASE propounded in the Paper incloſed, was thus worded:

Charles Rex.

WHen the Good and Safety of the Kingdom (in General) is concern'd, and the whole Kingdom in Danger; Whether may not the KING, *by Writ under the Great Seal of* England, *Command all the Subjects in His Kingdom, at their Charge, to Provide and Furniſh ſuch Number of Ships with Men, Victuals, and Munition, and for ſuch Time as He ſhall think fit, for the Defence and Safe-guard of the Kingdom, from ſuch Danger and Peril? And by Law compel the Doing thereof, in caſe of Refuſal or Refractorineſs? And, Whether in ſuch Caſe, is not the* KING *the ſole Judge, both of the Danger, and when and how the ſame is to be prevented and avoided?*

To which, the JUDGES delivered their Opinions as followeth:

May it pleaſe Your moſt Excellent Majeſty!

WE have, according to *Your Majeſtie's* Command, ſeverally, and every Man by himſelf, and All of us together, taken into Serious Conſideration, the *Caſe* and *Queſtions* Signed by *Your Majeſty*, and incloſed in *Your Letter*. And We are of Opinion, That when the Good and Safety of the Kingdom (in General) is Concern'd, and the whole Kingdom in Danger, *Your Majeſty* may, by Writ under the Great Seal of *England*, Command all the Subjects of This *Your Kingdom*, at their Charge,

to Provide and Furniſh ſuch Number of Ships with Men, Victuals, and Ammunition; and for ſuch Time, as *Your Majeſty* ſhall think fit, for the Defence and Safe-guard of the Kingdom, from ſuch Peril and Danger: And that by Law, *Your Majeſty* may Compel the Doing thereof, in caſe of *Refuſal* or *Refractorineſs*. And we are alſo of Opinion, That in ſuch Caſe, *Your Majeſty* is the ſole Judge, both of the Danger, and when and how the ſame is to be prevented and avoided.

John Bramſton, *John Finch*, *Hum. Davenport*, *John Denham*,
Richard Hutton, *William Jones*, *George Crook*, *Thomas Trevor*,
George Vernon, *Robert Barclay*, *Francis Crawley*, *Richard Weſton*.

But it is to be noted, That though all the *Judges* did thus Sign this Anſwer; yet it was not according to all their Opinions; for *Crook* and *Hutton* diſ-aſſented, and declared, That ſuch a Charge could not be laid by any ſuch Writ; but by *Parliament*. But the Major-Part of the *Judges*, being abſolutely Reſolved upon that Opinion, preſſed them to Subſcribe likewiſe with the reſt; for that the Greater Number muſt involve and conclude the Leſs; which, they ſaid, was uſual in all Caſes of Reference; And that the Leſſer Number muſt ſubmit to the Opinion of the More, although they varied in Opinion: As in the Courts of Law; If *Three Judges* agree in Opinion againſt *One* or *Two*, where there is *Five Judges*, Judgment is to be Entred *per Curiam*, if the *Major Part* agree, and the *Others* are to ſubmit unto it, *&c.* (Theſe are the very Words of *Judge Crook*, excuſing himſelf for having thus Subſcribed: See the *Arguments* on *Hampden's Caſe*, p. 12.)

Having thus got the Buſineſs *back't* with the *Subſcriptions* of all the *Judges* of *England*, the ſame were *Enrolled* in all the Courts of *Weſtminſter-Hall*: And now, they began to Proſecute briſkly, all the *Defaulters*; amongſt whom, the Chiefeſt was *John Hampden* of *Buckingham-ſhire*, Eſquire, who had upon one of theſe Ship-Writs directed to the Sheriff of that County, been Aſſeſſed *Twenty Shillings* for his Lands in *Stoke-Mandevil*, in that County; which not being paid, was Certified (amongſt others) into the *Chancery*, upon a Writ of *Certiorari*, Dated 9

Martii

Martii, *Anno* 12. *Car.* by a *Schedule* thereunto annexed; and by a Writ of *Mittimus*, *Teſte* 5 *Maii*, 13 *Car.* tranſmitted into the *Exchequer*; with a Command there, to do for the Leavying of the Sums ſo Aſſeſſed and Unpaid; *Prout de Jure, & ſecundum Legem Regni noſtri Angliæ fuerit faciendum*; *So as of Right, and according to the Law of our Kingdom of* England *was to be done*; whereupon a *Scire Facias* iſſued out of the *Exchequer*, reciting the ſaid Writs, to warn Mr. *Hampden* (amongſt others) to ſhew Cauſe, why he ſhould not be Charged with this Money. Upon this, he being Summoned, Appeared, and demanded *Oyer* of thoſe *Writs* and *Schedule*; which being Entred, he *Demurr'd in Law*; that is, demanded the Opinion and Judgment of the Court of *Exchequer*, Whether this *Writ* were ſufficient *in Law*, to Force him to pay the ſaid *Twenty Shillings*.

This being a *Great* and *General Caſe*, the Barons of the *Exchequer*, deſired the Aſſiſtance of the reſt of the *Judges*, who did Joyn accordingly. The Caſe was argued, firſt, by Counſel on both Sides; and next, by the *Judges* ſeverally; of whom, Sir *Richard Hutton*, Knight, one of the Judges of the *Common-Pleas*, and Sir *Richard Crook*, Knight, one of the Judges of the *King's-Bench*, in large and learned Arguments, (ſince Printed) did ſhew the *Illegality* of ſuch Writs, and gave their Opinion; *That the Defendant* Hampden, *ought not to be Charged*: But the reſt of the *Judges* were reſolved to carry the Point for the *King*; and accordingly gave their Opinions, *That the Defendant ought to be Charged*. And then, it was the Part of the *Barons* of the *Exchequer*, to give *Judgment*; which was Entred in theſe Words:

Quod ſeperalia Brevia predicta, & Retorn' eorundem, ac Schedul' prædict' eiſdem Annex', ac materia in eiſdem content' ſufficient' in Lege, Exiſt' ad præfat Johannem Hampdem *de predictis viginti ſolidis ſuper ipſum informa, & ex cauſa predicta Aſſeſſæ onerand. Ideo conſideratum eſt per eoſdem Barones quod prædictus* Johannes Hampden *de eiſdem viginti ſolidis oneretur, & inde ſatisfaciat: That the ſaid ſeveral Writs and Returns thereof, and the Schedules thereunto annex't, and the Matter in the ſame contained, are ſufficient in Law to Charge the ſaid* John Hampden *with the Twenty Shillings upon him, in the Form, and by Vertue of the Aſſeſſment afore-ſaid impoſed. Therefore, it is conſidered by the ſaid Barons, That the ſaid* John Hampden *ſhall be Charged, and ſhall ſatisfy the ſame.*

This *Judgment* was impoſed, as ſuch an *Infallible Determination*

of the Law in this Caſe, that no further Diſpute would be allow'd thereof to any others; inſomuch, that a Perſon of Honour, having a Caſe depending in the *King's-Bench*, was denyed any Argument or Debate, concerning the *Right* of *Ship-Money*, for no other Reaſon, but that it had been by the former *Judgment*, decided already in the *Exchequer*.

It may perhaps be ſaid: *This Impoſition of* Ship-Money *was* ſmall *and* inconſiderable; *Mr.* Hampden, *a Gentleman of a fair Eſtate, was Aſſeſſed but* Twenty Shillings: *And, Why ſhould any Body ſcruple ſuch a petty Buſineſs, when the* King *Commanded it? Was not the* Remedy *far worſe than the* Diſeaſe? *Why ſhould any Subject expend a great deal of Money in Law, to avoid Payment of ſo* Trivial *a Sum? Or, What Harm could accrue to the* Publick, *by the* Judges *allowing the* King *Power to Impoſe ſuch an Aſſeſſment, when it was for the Defence of the Realm from* Eminent *and* Imminent *Danger, and he exerted that Power ſo favourably*, &c.

In *Anſwer* to ſuch *Objections*, it muſt be ſaid; That true it is, it was then only Mr. *Hampden's* Caſe; but the whole Nation, every individual Subject of *England*, was concern'd in it: nay, ſo far concern'd, that all his Eſtate and Liberty was therein given up. The *Queſtion* was not *Quantum*, but *Quo Jure*? If Publick Danger might give the *King* Title to lay Impoſitions without a *Parliament*, and He alone were *Judge* of ſuch Danger, When might it not be alledged? If *Twenty Shillings* were Aſſeſſed on Mr. *Hampden* that Year, How did it appear, but *Twenty Pounds* might be required the next, and *Two Thouſand Pounds* the Year following? And, What Uſe, what Occaſion would the *Court* have had for ever afterwards, of a *Parliament*? But as to the *Illegality* of theſe *Ship-Writs*, I refer the *Reader* to Judge *Crook's Argument*; where the ſame is Demonſtrated to be againſt the *Common-Law*, againſt divers *Statutes*, not to be maintain'd by any *Prerogative*, or Power Royal, unwarrantable by any form'd *Precedents*, &c.

Let us ſee then, what were the *Conſequences* of theſe *Extrajudicial* Opinions, and this *Illegal* Judgment of the *Judges*.

Firſt, As to the *King*: They thereby miſ-led him (as much as in them lay) to Diſcompoſe the Harmony of *Government*; to Entrench upon the *Property* of His Subjects; and (contrary to his Intentions) by Colour of Right, to violate the Laws, which, no doubt, that *Good Prince* meant to have preſerv'd Inviolable.

Secondly,

Secondly, As to the *Subjects*: They were not only hereby Injured, but their *Affections Alienated* from their Sovereign; which to occasion, is no doubt a very High (because almost Irreparable) *Treason*.

The Genuine Sense of these *Resolutions*, being no less than this; That the *King* of *England*, as *often* as Himself pleaseth, may declare the Kingdom to be in Danger, and that so often, His Majesty, for Prevention of such Dangers, may, by His Writ under the Great Seal of *England*, alter the *Property* of the Subject's Goods, without their Consent in *Parliament*; and that in *such Proportions*, as His Majesty shall think fit: And besides, may deprive them of the *Liberty* of their Persons, and that in such Manner as Himself shall please.

Thirdly, As to the *Judges* themselves: It prov'd deservedly *Fatal*; For no sooner was a *Parliament* Call'd, but they were call'd to Account for these their Illegal Opinions and Judgment.

And after a long Debate, on *Monday* the *Seventh* of *December*, 1640. these *Four* several *Votes* Passed upon them, without so much as *One Negative Voice* to any of them, *viz.*

First, **That the Charge imposed upon the Subjects, for the Providing and Furnishing of Ships; and the Assessments for Raising of Money for that purpose, commonly called Ship-Money, are against the Laws of the Realm, the Subjects Right of Property, and contrary to former Resolutions in Parliament, and to the Petition of Right.**

Secondly, **That the Extrajudicial Opinions of the Judges, Published in the** Star-Chamber, **and Inrolled in the Courts at** Westminster (**before Recited**) **in the whole, and in every part of them are against the Laws of the Realm, the Right of Property, and the Liberty of the Subjects, and contrary to former Resolutions in Parliament; and to the Petition of Right.**

Thirdly, **That the Writ to the Sheriff of** Bucks (**particularly Recited**) **and the other Writs, commonly called Ship-Writs; are against the Laws of the Realm, the Right of Property, and the Liber-**

ty of the Subjects, and contrary to former Reſolutions in Parliament, and to the Petition of Right.

Fourthly, **That the Judgment in Mr. Hampden's Caſe (as before Recited) in the matter and ſubſtance thereof; and in that it was conceived that Mr. Hampden was any way Chargeable, is againſt the Laws of the Realm, the Right of Property, the Liberty of the Subjects, and contrary to former Reſolutions in Parliament, and to the Petition of Right.**

Theſe *Votes* being Tranſmitted by the *Commons* to the *Houſe of Lords*; Their Lordſhips did Concur therein. And on *Friday* the 26. of *February*, 1640. It was Ordered by the Lords *Spiritual* and *Temporal*, in the High *Court of Parliament*, Aſſembled; That the *Lord-Keeper*, or *Maſter of the Rolls*, the Two Lord *Chief Juſtices*, and the Lord *Chief Baron*; and likewiſe the *Chief Clerk of the Star-Chamber*, ſhould bring into the Upper *Houſe of Parliament*, the *Records* of the Judgment againſt Mr. *Hampden*, concerning *Ship-Money*, in each of thoſe ſeveral Courts, and that a *Vacat* thereof ſhould be made. And that a Copy of the Judgment of the *Parliament*, concerning the *Illegality* thereof, ſhould be Delivered to the ſeveral *Judges of Aſſize*; and that they ſhould be required to Publiſh the ſame in all the *Circuits*. Which on the 27. of the ſame *February*, was done accordingly: the ſaid *Records* being *Vacated*, and the *Rolls* Croſs'd with a Pen in the *Houſe of Lords*, and Subſcribed with the *Clerk* of the *Parliament's* Hand.

And ſoon after, ſeveral of the before-named Judges were *Impeached* for the ſame in *Parliament*: And not daring to ſtand the *Shock*, ſome of them, as the Lord *Chief Juſtice Finch*, Fled beyond the Seas; and *others* Abſconded. And ſoon after, came on the Unnatural *Civil-Wars*, ſo Deſtructive to *King* and *Kingdom*; which, though no way Juſtifiable, yet it cannot be denyed; but they were not a little *Occaſion'd*, and the Animoſities of the People, blown into an Untameable *Flame*, by theſe baſe Traiterous Proceedings of thoſe *Sycophant Judges*. And *Woe unto thoſe* (ſay Sacred *Oracles*) *by whom Offences come*.

However, after ſo many diſmal Experiences, and fair Warnings, and the Miraculous *Reſtauration* of His preſent Majeſty, our

our Gracious Soveraign (whom *God* long Preserve) a *Prince* of Incomparable Lenity, and Good-natur'd beyond Example; it might be hoped, that none, Preferr'd to the *Publick Seats of Justice*, durst to have Acted so contrary to His Royal Inclinations, as to violate those *Laws*, which He Himself has *Sworn* to Maintain, and Instituted them to *Administer*: Yet so Base and Extravagant are some, as even to abuse the Favours of the *Best of Princes*, and puff't up with Preferment, will take no Admonition from the Falls of their *Head-strong* Predecessors; but still presume to sully those *Ermins*, (the *Emblems* of *Innocency* and *Integrity*) which they wear, and adventure on the same Destructive Precipices.

You have heard, how heinously our Prudent Ancestors resented the Violation of their *Liberties*, (though by an Act) in Tryals of the Free-born People of *England* **without Juries.** Next to which, is the *Ruffling*, *Hectoring*, and *Over-awing* of *Juries*: For, What real Difference is there, betwixt allowing no *Juries* at all, and *Menacing* them into a Compliance (contrary to *Law*, and their own *Consciences*) with the Corrupt Humours, and Time-serving Interests of ill Judges? Of this Crime, the Lord *Chief Justice Keeling*, about the Year 1666. (a Time when *God*'s General Judgments on this Sinful Land, might have awakened them to greater Circumspection and Uprightness) was not only Guilty, but Question'd for the same, even by *That* very *Parliament*, which was never extraordinarily Celebrated for bringing *Publick Vermine* to Punishment: Yet such a Sense they had of these ill Practises, that in their *Journal*, we find the following *Votes* on this Occasion.

Die Mercurii 11° Decembris, 1667.

THE House Resuming the Hearing of the rest of the Report, touching the Matter of Restraint upon Juries; *and upon the Examination of divers Witnesses in several Cases of Restraints put upon Juries, by the Lord Chief Justice* Keeling,

Resolved, as followeth:

First, *That the Proceedings of the said* Lord Chief Justice, *in the Cases now Reported, are* Innovations *in the Tryals of Men for their Lives and Liberties; and that he hath used an Arbitrary, and Illegal*

Power, which is of dangerous *Consequence to the Lives and Liberties of the People of* England, *and tends to the Introducing of an Arbitrary Government.*

Secondly, *That in the Place of* Judicature, *the* Lord Chief Justice *hath Undervalued, Vilified, and Contemned* **Magna Charta**; *the great Preserver of our Lives, Liberties, and Property.*

Thirdly, *That he be brought to* Tryal, *in Order to* Condign Punishment, *in such Manner as the House shall judge most Fit and Requisite.*

And again: **Die Veneris 13° Decembris, 1667.**

Resolved,

THat *the Precedents, and Practice, for* Fining *or* Imprisoning *of* Jurors *for Giving their Verdicts, is Illegal.*

Here you see the ill Practices of that *Chief Justice*, were *Branded* in *Parliament*, and he was ordered to be Prosecuted; though by reason of the *Houses* being *Prorogued*, and he himself not long after *Dying* in *Discontent*, we do not find there were any further *Proceedings* made therein.

At the Sessions for *London*, *Sept.* 1670. *William Penn*, and *William Mead*, (Two of the People commonly called *Quakers*) being Indicted: *For that they the Fourteenth of* August *before, did with others, to the Number of* Three Hundred, *in* Grace-Church-Street, *Unlawfully and Tumultuously Assemble, &c. by reason whereof a great Tumult did there happen, in Contempt of the* King, *great Disturbance of the Peace, & Terror of the People*, &c. And the *Jury* (after having been several times sent back, and kept close from the *Saturday* till the *Monday* Morning) bringing them in *Not Guilty*, Sir *John Howel*, then *Recorder* of *London*, presumed to *Fine* the said Jury *Forty Marks* a Man, and to *Lye in Prison* till paid. Being thus in Custody, *Edward Bushel*, one of the said *Jury-Men*, brought his *Habeas Corpus* in the Court of *Common-Pleas*; and upon a long Argument, it was Adjudged by the whole Court, That the said *Fining* and *Commitment* was *Illegal*: Whereupon the said *Bushel* was Discharged, and left to bring his Action for False Imprisonment, against the said *Recorder*: Which Case is Reported by *Vaughan*, at that time Chief Justice of the said Court, in his *Reports*, *Licensed* and *Approved* of by the present Lord-Chancellor of *England*, Sir *William Scroggs*, since Lord Chief-Justice of the *King's-Bench*, my Lord *North*, Chief-

Chief-Justice of the *Common-Pleas*; and all the Judges of *England*. But as to the *Illegality* of any Courts *Imposing upon*, *Menacing*, *Fineing*, or *Imprisoning Juries*, see a small *Treatise*, Entituled, **The English-Man's Right**, Printed for *R. Janeway*, 1680. and another called, **The Grand Jury-Man's Oath and Office Explained**, Sold by *Langley Curtis*, on *Ludgate-Hill*; both well worthy the Perusal of every True *English-Man*.

What Proceedings have been *since*, or rather are at this instant *pendent* against *Judges*, for *Hectoring* of *Juries*, and other Illegal *Arbitrary Proceedings*, are too fresh in every Bodies Memory, to need a Recital. Instead of which, I shall rather Insert *the Form of the Oath*, Taken by *Judges* at their first Admittance to that *Office*; which runs as follows:

The OATH of a JUDGE.

In Dorso Claus': de Anno 20. Edw. 3^i. *Part. Prima.*

YE shall Sweat, That Well and Truly ye shall Serve our Sovereign Lord the King, and His People, in the Office of Justice: And that ye shall Counsel our Sovereign Lord the King, in His Needs: And that ye shall not give any Counsel, or Assent to any thing, the which might turn to Hurt, or Disheriting of the King, by any Way or Colour: And that ye shall not know any Hurt, or Disheriting of the King; but that ye shall make it to Him known, by You, or by some other Person: And that ye shall do equal Law and Execution of Right, to all the King's Subjects, Rich and Poor, without having Regard to any Person: And that ye shall not take by You, or by any other privily, ne apart, any Gift or Reward of Gold, or of Silver, nor of any other Thing, the which might turn you to Profit, unless it be Meat or Drink; and that of Little Value, of any Man that shall have any Plea, or Process, hanging before you, as long as the same before your self such Pleas and Processes shall be hanging, nor after for that Cause; And that ye shall take no Fees, as long as ye be Justice, nor Robe of any Person, great or small, in any Case, but of the King himself: And that ye shall not give any Counsel, or Assice to any Person, great or small, in any Case, where the King is Party: And in case that any Persons, of what ever Estate they be of, come before You in Sessions, with Force and Arms, or otherwise, against the Peace, or against the Form of the Statute thereof made, for to disturb the Execution of the Common-Law, or for to Menace the People, that they may not do the Law; That ye shall Arrest their Bodies, and put them in Prison; and in case they be such as ye may not Arrest, that ye shall Certifie the King of their Names, and of their Misdoing hastily; to that End, that he may thereof Ordain Remedy; & that ye shall not maintain

tain by your ſelf, nor by none other privily nor openly, any Plea or Quarrel hanging in the King's Courts, or elſewhere in the Country: And that ye ſhall not Delay any Perſon of Common-Right, for the Letters of the King, or of any other Perſon, nor for any other Cauſe: And in caſe that any Letters come to you contrary to the Law, that ye ſhall nothing do for ſuch Letters, but ye thereof ſhall Certifie the King: And ye ſhall proceed to do the Law, the ſame Letters notwithſtanding; and that ye ſhall do, And procure the Profit of the King, and his Crown in all Things, where ye them Reaſonably may do. And in caſe that ye be found in Default here-after, in any of the Points afore-ſaid, ye ſhall be at the King's Will of Bodies, Lands, and of Honour, to do thereof that that ſhall pleaſe the King.

This well-contrived, neceſſary *Oath*, preſcribed by the Prudence of our Fore-Fathers, would bear a large *Comment*; but we muſt haſten, and ſhall only remarque:

Firſt, That they Swear, *Well and Truly* (that is, *Uprightly*, and according to *Law*) *to Serve the* King, *and his People.*

Secondly, That they ſhall do *Equal Right, and Execution of Law, to all the* King's *Subjects, Rich and Poor*; (that is, without *Partiality, Favour, Malice*, &c.) *Juſtice* is Pictured *Blind* in reſpect of the *Subject*, not the *Object*: She has a *Ballance*, not to weigh *Gold*, but the *Crime*: She has regard to *Offences*, not *Perſons*.

Thirdly, That if any *Letters from the King* (unduely obtain'd, for ſo all ſuch are ſuppoſed to be) ſhall be brought to them, *contrary to Law*, they are not to regard them; much leſs are they to value any *Verbal* Commands, or little *Raskally Inſinuations* of any *Court-Favourites*, huffing *Grandees*, or ſmall *Minions* of State.

Fourthly, That by this their *Oath*, *Judges* are to proceed according to *Law*; their Buſineſs is *Jus Dicere*, to Declare and Adminiſter the Laws Eſtabliſh't; not *Jus Dare*, to Impoſe their own Whimſical, Arbitrary, *Peeviſh*, or Self-deſigning Opinions, for *Law*; or to Uſurp a *Legiſlative* Power, ſo as deliver that to be Law, which in truth is not ſo. And if they ſhall preſume to offend herein, they are *Exemplarily* to be puniſhed: For ſince 'tis a known *Maxime* of Law, *Ignorantia Juris non excuſat, That Ignorance of the Law ſhall excuſe no Man*; (The Reaſon of which, is, becauſe every Man is ſuppoſed to be *Privy*, and conſenting to all our Laws, by his *Repreſentatives* in *Parliament*.) How much leſs are *Judges* (whoſe *Profeſſion* and *Office* it is to Underſtand the Law; and therefore, muſt take Notice of it, at their *Peril*) to be Indulg'd? Under what Character will they plead Excuſe? Are they Perſons of known *Learning*, and ſtrong *Natural Parts*, great *Reading*, exquiſite

exquiſite *Eloquence*, &c.? All this but *aggravates* their Fault, that they ſhould abuſe ſuch good Gifts, to the Diſhonour of the *King* that Commiſſions them, and Prejudice of His *People* that expected more exact Dealings from ſuch Eminent Accompliſhments. Will they ſhelter themſelves under the before-mentioned *Plea* of *Ignorance*? This is already ſhewn to be an Invalid Allegation; and beſides, 'tis a Reflection on that *Royal Power* that Preferr'd them; And, What infinite Miſchiefs (of which there is no Particular *Complaint* or *Information*) may the Subjects ſuffer in their *Lives*, and *Fortunes*, under ſuch *Ignorance*, which is always attended with Equal *Preſumption*? Or, *laſtly*, Suppoſe it ſhould be offered in their Favour, That for ſome time, at firſt, they were *Upright*, and have had the Reputation of Prudence and Integrity, in all Caſes, except *ſuch* and *ſuch*: for which **Now** they are queſtioned: To this it may be fitly Anſwer'd, (as he of *Lacedemon* ſaid of the *Athenians*) If they carryed themſelves *Well*, when Time was, and now *Ill*, they deſerve a *Double* Puniſhment; becauſe they are not *Good*, as they *were*; and becauſe they are *Evil*, as they *were not*. The *Judges*, 'tis true, are declared in the *Parliament-Roll* of the 11 R. 2. to be *Executors* of the *Statutes*, Judgments, and Ordinances of *Parliament*: But they muſt not make themſelves the *Executioners* of them too, by endeavouring the Deſtruction of the Fundamentals of our *Laws* and *Liberties*. The *Law* is the *Temple*, the *Sanctuary*, whither the Subject is to run for Shelter and Defence: But if the Judges, *Sacerdotes Juſtitiæ*, thoſe *Prieſts of Juſtice*, ſhall, like thoſe of *Delphos*, utter *Falſe*, *Ambiguous*, and *Time-Serving Oracles*, Where is the Comfort of the Poor *Votaries*? Will not this *Sanctuary* then become *Templum ſine Numine*, like that of the *Roman Emperour*, who after he had built it, put no *Gods* into it? We ſhall have the Dead *Killing-Letter* of the *Laws*, but not the Quickening, Preſerving *Senſe* of it: The Fabrick and Formalities of the *Temple*; but the *Goddeſs Aſtræa*, and the *Dii Tutelares*, all that ſhould Conſerve our *Liberties* and *Properties*, will be vaniſh't: And inſtead thereof, we ſhall have but an *Indian Pagod*, a frightful, terrible *Idol* of *Arbitrary Power*, delighting in *Humane Sacrifices*, and only Adorable for Averting that *Miſchief*, with which it threatens us.

But, *Contraria juxta ſe poſita magis eluceſcunt*: *Contraries illuſtrate each other*. We have hitherto Treated the *Reader* with *Doleſome Narratives* of *Lewd Judges*: Let us now (briefly) Entertain him

with an Account of ſome *Good* and *Imitable* Ones; *Memoria Juſti in Æternum.*

In the Reign of King *H.* 4. His Son and Heir apparent (then a *Wild Youth*, but afterwards as Solid, and Renowned a King, as moſt that have ſway'd the *Engliſh* Scepter) hearing that one of his Companions was Arraigned for Felony before the Lord Chief Juſtice of *England* (I am ſorry my narrow Reading has not brought me acquainted with his Honourable Name) came to the Bar, and offered to take away the *Priſoner* by force; but being withſtood by the ſaid Chief Juſtice, ſtepped to him, and *Struck* him over the Face; whereat the Judge nothing daunted, roſe up, and with a *Gravity* becoming his Dignity, told him, That he did not this Affront to *Him*, but to the King his *Father*, in whoſe Place he ſate; and therefore, forthwith Committed him to Priſon. The Prince *Over-aw'd* with the Majeſty of the *Sage Judge*'s Expreſſions, calmly Suffered himſelf to be carried away by an ordinary *Tip-Staff*; which being told the King, He not a little Rejoyced, both that he had a *Judge* of ſuch Couragious Integrity; and a *Son* of ſuch Submiſſive Obedience to his Laws, *Vide Baker fol.* 163.

The Famous Queen *Elizabeth*, having required a *Charge* upon divers of Her Subjects, by particular Letters from the Lords of Her Council, of ſeveral *Sums* of Money, for preſent Aid towards Her Wars in *Ireland*; hearing that one of Her *Judges*, viz. Mr. Juſtice *Walmeſley*, being conven'd before the ſaid Lords, for Non-Payment thereof, thereby Diſcouraging others; had Anſwered, That it was *Contrary to Law* that the ſame ſhould be Impoſed, there being an Expreſs *Statute* againſt it; which He being a *Judge*, was bound by his Oath, to ſignifie to Her Majeſty, he being (as much as in him lay) a Conſervator of the *Queens Oath* in that behalf; Her Majeſty was much Offended, that any ſuch Impoſition had been pretended to, and Commanded that it ſhould be ſtopped from further *Gathering*; and to ſuch as had paid it, their Money, by Her expreſs Order, was *Reſtored. Judge Crooks Argument* in *Hampden's Caſe*, p. 57.

In the 29*th.* of the ſame Queen, Her Majeſty having Erected a New-Office in the *Common-Pleas*, for making of *Superſedeas* on *Exigents*, She Grants it to one *Cavendiſh* Her Servant; ſends to have him admitted, but the Judges delay the doing thereof, On this Reaſon, becauſe the *Prothonotaries*, and *Philizers* Claimed the making

making those Writs. The Queen ſends a *Sharp* Letter, and Commands them forthwith to Admit him: Then She ſends a more poſitive Command, requiring the Reaſon of their *Contempt* and Diſobedience. The Judges return the before-mentioned Reaſon to the Lord *Keeper*, and Earl of *Leiceſter* (no mean Man in thoſe Days) upon which, the Queen ſends a *Fourth Peremptory* Meſſage for their Admitting him, with this Reaſon: That if the others were put out, they were *Rich*, and Able Men, and that Her Courts of Juſtice were *Open*, where they might Demand their Right; for this was not to debar them *Therefrom*, but only to put them to their *Action*. The *Honeſt Judges* returned this Anſwer, That the Queen had taken Her *Oath*, for the due Execution of Juſtice *According to Law*, and they did not doubt, but when Her Majeſty was Informed it was againſt the Law, She would Act therein as became her. For their own parts, they had taken an *Oath* to *God*, to *Her*, and the **Common-Wealth**; And if they ſhould do it without *Proceſs* of Law before them, and only upon Her Command put the others out of Poſſeſſion, though the Right remained to them, it were a Breach of their *Oath*; and therefore, if the Fear of *God* were not Sufficient, they told Her the Puniſhment, that was Inflicted upon their *Predeceſſors* for Breach of their Oaths (citing *Thorpe*, &c.) might be a ſufficient *Warning* to them: Whereupon the Queen hearing theſe Reaſons, was Satisfied; and the ſaid Judges heard no more of this Buſineſs.

To Deſcend nearer our own Times, we cannot omit that grand Example of *Uprightneſs*, the ever Famous Sir *Matthew Hale*, late Lord Chief Juſtice of the King's Bench; a *Miracle* for all other parts of *Polite* and *Serious* Learning, as well as profound Knowledge in the *Laws* of *England*. Of whom I ſhall yet, not offer any particular *Inſtances*, ſince his whole Life was one continued Thred of *Sincere*, *and Underſtanding Juſtice*: For as eaſily you might have juſtled the *Sun* out of the *Ecliptick*, as to have warp'd him from his conſtant Road of *Integrity*. An exact *Standard* whereby *Future Princes* may meaſure the Qualifications of their *Judges*; for though he were a moſt *Loyal*, and Zealous Servant to the *Crown*; yet he was ſo far from being ever *Impeached* by the *Repreſentative Body* of the Nation, that no one *Single* Perſon (no not of thoſe that were *Caſt* before him) were ever heard to complain of his Conduct.

And if any *Latter* Judges have been diſmiſs'd by falſe Tales of

FINIS.